

TIMOTHY B. DEL CASTILLO (SBN: 277296)
tdc@castleemploymentlaw.com
LISA L. BRADNER (SBN: 197952)
lb@castleemploymentlaw.com
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Telephone: (916) 245-0122

Attorneys for Plaintiffs RYAN DEVORE
on behalf of himself and similarly situated employees

(Additional counsel on the following page)

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

Case No. 34-2021-00304976

CLASS ACTION– Jury Trial Demanded

RYAN DEVORE, GUADALUPE
ANTONIO SANCHEZ, and RICARDO
GALLARDO, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

BWW RESOURCES, LLC, a Delaware
Corporation; INSPIRE BRANDS, INC., a
Georgia Corporation; BUFFALO WILD
WINGS, INC., a Minnesota Corporation;
and Does 1 through 20, inclusive,

Defendants.

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR DAMAGES:**

1. Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*
2. Failure to Provide Accurate Wage Statements;
3. Failure to Pay Minimum Wages;
4. Failure to Pay Overtime Wages;
5. Failure to Provide Meal and Rest Periods;
6. Waiting Time Penalties;
7. Failure to Reimburse Business Expenses
8. Unlawful Retention of Gratuities
9. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*

1 **AEGIS LAW FIRM, PC**

2 KASHIF HAQUE, State Bar No. 218672

3 SAMUEL A. WONG, State Bar No. 217104

4 JESSICA L. CAMPBELL, State Bar No. 280626

5 JOSEPH M. SZILAGYI, State Bar No. 317450

6 Email: jcampbell@aegislawfirm.com

7 Email: jszilagyi@aegislawfirm.com

8 9811 Irvine Center Drive, Suite 100

9 Irvine, California 92618

10 Telephone: (949) 379-6250

11 Attorneys for Plaintiffs GUADALUPE ANTONIO SANCHEZ,
12 and RICARDO GALLARDO individually, and on behalf of all others similarly situated.
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1 Plaintiffs RYAN DEVORE, GUADALUPE ANTONIO SANCHEZ, and RICARDO
2 GALLARDO (“Plaintiffs”), on behalf of themselves and all other similarly situated employees hereby
3 file this First Amended Complaint against Defendants BWW RESOURCES, LLC, a Delaware
4 Corporation; INSPIRE BRANDS, INC., a Georgia Corporation, BUFFALO WILD WINGS, INC., a
5 Minnesota Corporation; Does 1 through 20 (collectively referred to as “Defendants”). Plaintiffs allege
6 the following:

7 **INTRODUCTION**

8 1. This is a class and representative action brought by Plaintiffs seeking damages for
9 failure to provide meal and rest periods, failure to pay minimum and overtime wages, inaccurate wage
10 statements, failure to reimburse for business expenses, unlawful retention of gratuities, failure to pay
11 wages timely, failure to maintain accurate employee records, and derivative civil and statutory
12 penalties. Plaintiffs seek these damages and penalties, plus interest and attorney’s fees, on behalf of
13 themselves and similarly situated employees.

14 2. During all relevant times, Plaintiffs and similarly situated employees worked for
15 Defendants as employees. Defendants issued wage statements to Plaintiffs and similarly situated
16 employees that did not comply with California law because, among other things, they did not include
17 all hours worked and did not include written notice of the amount of paid sick leave available in
18 violation of Labor Code section 246. As a matter of policy and practice, Defendants failed to provide
19 Plaintiffs and similarly situated employees meal and rest periods, which is in violation of the California
20 Labor Code.

21 **JURISDICTION AND VENUE**

22 3. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
23 violations of California Labor Code §§ 226, 226.3, 213, 246, 2698 *et seq.*, Business and Professions
24 Code § 17200 *et seq.*

25 4. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
26 the wrongful acts and violations of law asserted herein occurred within Sacramento County.

27 **PARTIES**

1 5. Plaintiff RYAN DEVORE is over the age of eighteen (18) and is a resident of the State
2 of California and a former employee of Defendants.

3 6. Plaintiff GUADALUPE ANTONIO SANCHEZ is over the age of eighteen (18) and is
4 a resident of the State of California and a former employee of Defendants.

5 7. Plaintiff RICARDO GALLARDO is over the age of eighteen (18) and is a resident of
6 the State of California and a former employee of Defendants.

7 8. Plaintiffs are informed and believe, and thereupon allege, that Defendant BWB
8 RESOURCES, LLC, is a Delaware Corporation; an industry, business and/or facility licensed to do
9 business and actually doing business in the State of California, as among other things, Buffalo Wild
10 Wings.

11 9. Plaintiffs are informed and believe, and thereupon allege, that Defendant BUFFALO
12 WILD WINGS, INC., is a Minnesota Corporation, and Plaintiffs' joint-employer. BUFFALO WILD
13 WINGS, INC., does business in California as a restaurant.

14 10. Plaintiffs are informed and believe, and thereupon allege, that Defendant INSPIRE
15 BRANDS, INC., is a Georgia Corporation, doing business in California as Buffalo Wild Wings, and
16 is Plaintiffs' joint-employer.

17 11. Plaintiffs are informed and believe, and thereupon allege that Defendant BWB
18 RESOURCES, LLC is now and/or at all times mentioned in this Complaint a Delaware Limited
19 Liability Company, doing business in California as Buffalo Wild Wings, and is Plaintiffs' joint-
20 employer.

21 12. Plaintiffs are informed and believe, and based thereon allege, that Defendants, jointly
22 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
23 employees.

24 13. Defendants proximately caused Plaintiffs and similarly situated employees to be
25 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
26 Complaint.

27 14. Plaintiffs are further informed and believe, and thereon allege, that each of the
28 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or

1 joint venturer of the remaining defendants and was acting within the course and scope of that
2 relationship. Plaintiffs are further informed and believe, and thereon allege, that each of the Defendants
3 herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining
4 defendants. The true names and capacities of the defendants named herein as Does 1 through 20,
5 inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiffs, who
6 therefore sue such defendants by fictitious names pursuant to California Code of Civil Procedure
7 section 474. Plaintiffs will amend this complaint to show such true names and capacities of Does 1
8 through 20, inclusive, when they have been determined.

9 **CLASS ALLEGATIONS**

10 15. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as
11 a class action pursuant to California Code of Civil Procedure section 382. The classes that Plaintiffs
12 seek to represent are composed of and defined as follows:

13 All non-exempt employees who were employed by Defendants in California
14 at any time four (4) years prior to the filing of this Action up to the date that
15 this matter is certified as a class action who did not enter into arbitration
16 agreements with Defendants.

17 16. This action has been brought and may be properly maintained as a class action, pursuant
18 to the provision of California Code of Civil Procedure section 382, because there is a well-defined
19 community of interest in the litigation and the proposed classes are easily ascertainable.

- 20 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all
21 members is impracticable under the circumstances of this case. While the exact
22 number of class members is unknown to Plaintiffs at this time, Plaintiffs are
23 informed and believe that Defendants may have employed hundreds of individuals
24 falling within the above stated class definition throughout the State of California
25 during the applicable statute of limitations, who were subjected to the practices
26 outlined in this Complaint. As such, joinder of all members of the Plaintiff Class
27 is not practicable.
28

1 (b) Common Questions Predominate: Common questions of law and fact exist as to all
2 members of the Plaintiff Class and predominate over questions that affect only
3 individual members of the class. These common questions of law and fact include,
4 without limitation, the following:

- 5 (1) Whether Defendants accurately stated all required information on
6 paystubs issued to members of the Plaintiff Class;
- 7 (2) Whether Defendants maintained the time and payroll records for
8 their employees as required under the California Labor Code;
- 9 (3) Whether Defendants provided meal and rest periods to their
10 employees as required under the California Labor Code;
- 11 (4) Whether Defendants maintained policies and practices that deprived
12 meal and rest periods to their employees in violation of the
13 California Labor Code;
- 14 (5) Whether Defendants paid all required minimum and overtime wages
15 to their employees as required under the California Labor Code;
- 16 (6) Whether Defendants failed to maintain accurate and complete records
17 showing, among other things, the hours worked daily by and the wages
18 paid to employees;
- 19 (7) Whether Defendants reimbursed employees for reasonable business
20 expenses, including mileage;
- 21 (8) Whether Defendants failed to pay Plaintiff and Class Members all
22 gratuities;
- 23 (9) Whether Defendants failed to timely pay all wages due upon termination
24 or within seventy-two (72) hours of resignation;
- 25 (10) Whether Defendants' conduct was willful or reckless; and
- 26 (11) Whether Defendants engaged in unfair business practices in violation
27 of Business and Professions Code §§ 17200, et seq.;
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- 1 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the
2 Plaintiff Class. Plaintiffs also sustained damages arising out of Defendants'
3 common course of conduct in violation of the law as complained of herein.
4 Defendants failed to provide meal and rest periods to their employees, failed to pay
5 all wages owed, and issued Plaintiffs and all members of the putative class wage
6 statements that did not comply with Labor Code sections 226 and 246.
7 Additionally, Defendants failed to reimburse Plaintiffs and Class members for
8 reasonable business expenses. As a result, each putative class member will have
9 the same basis for their legal claims.
- 10 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the members
11 of the putative class. Plaintiffs reside in California and are adequate representatives
12 of the putative class as they have no interests that are adverse to those of absent
13 class members. Additionally, Plaintiffs have retained counsel who have substantial
14 experience in complex civil litigation and wage and hour matters.
- 15 (e) Superiority: A class action is superior to other available means for the fair and
16 efficient adjudication of the controversy since individual joinder of all members of
17 the classes is impracticable. Class action treatment will permit a larger number of
18 similarly situated persons to prosecute their common claims in a single forum
19 simultaneously, efficiently, and without the unnecessary duplication of effort and
20 expense that numerous individual actions would engender. Further, as damages
21 suffered by each individual member of the classes may be relatively small, the
22 expenses and burden of the individual litigation would make it difficult or
23 impossible for individual members of the class to redress the wrongs done to them,
24 and an important public interest will be served by addressing the matter as a class
25 action. The cost to the court system of adjudication of such individualized litigation
26 would be substantial. Individualized litigation would also present the potential for
27 inconsistent or contradictory judgments.
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1 17. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
2 management of this action that would preclude its maintenance as a class action.

3 **GENERAL ALLEGATIONS**

4 18. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully
5 set forth herein.

6 19. Defendants own and manage a chain of restaurants in California.

7 20. Plaintiffs worked for Defendants as non-exempt employees in California. Plaintiffs
8 were at all times classified by Defendants as non-exempt employees, and were entitled to overtime
9 pay, minimum wages, meal and rest periods, reimbursement for business expenses, and gratuities.
10 However, Defendants failed to provide meal and rest periods to Plaintiffs and similarly situated
11 employees, failed to pay all minimum and overtime wages owed, failed to reimburse all business
12 expenses, unlawfully retained gratuities, and violated various other provisions of the Labor Code

13 21. Plaintiffs bring this Class Action on behalf of themselves and similarly situated
14 employees in order to fully compensate themselves and Class Members for their losses incurred during
15 the class period caused by Defendants' uniform policies and practices which failed to lawfully
16 compensate these employees.

17 22. Defendants' uniform policies and practices alleged herein were unlawful, unfair, and
18 deceptive business practices whereby Defendants retained and continue to retain wages due Plaintiffs
19 and the other Class Members. Plaintiffs and the other Class Members seek an injunction enjoining
20 such conduct by Defendants in the future, relief for the named Plaintiffs and the other Class Members
21 who have been economically injured by Defendants' past and current unlawful conduct, and all other
22 appropriate legal and equitable relief.

23 23. Defendants did not allow Plaintiffs and similarly situated employees to take their
24 statutorily required meal and rest periods. Defendants required Plaintiffs and other similarly situated
25 employees to clock out for a 30-minute meal period at the start of their shift, and required Plaintiffs
26 and other similarly situated employees to then work the remainder of their six to eight-hour shifts
27 without any meal break period.

1 24. Defendants also refused to provide rest periods to Plaintiffs and similarly situated
2 employees for every 4 hours worked or major fraction thereof.

3 25. Defendants' management staff were aware this was occurring, and Plaintiffs
4 specifically complained about it to Defendants, and still Defendants did not ensure meal and/ or rest
5 periods were provided to Plaintiffs and similarly situated employees in compliance with California
6 law.

7 26. Plaintiffs and similarly situated employees were suffered and permitted to work off the
8 clock without compensation when they were required to drive to other store locations in their own
9 personal vehicles without pay. Defendants and Plaintiffs' managers were aware of this additional
10 work, but Plaintiffs have not been compensated for it.

11 27. Plaintiffs and similarly situated employees were not receiving all wages earned for
12 work that was required to be performed. In violation of the Labor Code and IWC Wage Orders,
13 Plaintiffs and Class Members were not paid all minimum and overtime wages for all hours worked
14 and at the correct rate, such as failing to pay reporting time pay.

15 28. Plaintiffs and similarly situated employees also incurred business expenses without
16 reimbursement. For example, Plaintiffs were required to travel to Defendants' other locations in their
17 personal vehicles, and Defendants never reimbursed Plaintiffs and similarly situated employees for
18 mileage.

19 29. Under California Labor Code Section 2802, employers are required to indemnify
20 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
21 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
22 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
23 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
24 employee, at the time of obeying the directions, believed them to be unlawful."

25 30. Because of these Labor Code violations, Defendants did not provide Plaintiffs and
26 similarly situated employees legally compliant wage statements noting, among other things, total
27 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and the
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1 corresponding number of hours worked at each hourly rate, and the amount of paid sick leave
2 available.

3 31. Defendants also did not provide Plaintiffs and similarly situated employees all wages
4 owed upon their termination or within seventy-two (72) hours of their separation from employment.

5 32. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other things, gross
7 wages earned and all applicable hourly rates in effect during the pay period and the corresponding
8 amount of time worked at each hourly rate. Aside from the violations listed above, Defendants failed
9 to issue to Plaintiffs and similarly situated employees an itemized wage statement that lists all the
10 requirements under California Labor Code 226 et seq.

11 33. Defendants' uniform policies and practices to not provide Plaintiffs and Class Members
12 meal and rest periods, not pay all minimum wages earned, not pay all wages owed at termination or
13 resignation, and not to provide compliant wage statements are evidenced by Defendants' business
14 records.

15 34. Defendants' uniform policies and practices to retain the gratuities of Plaintiffs and
16 Class Members. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and Class Members were entitled to all gratuities paid, given to, or
18 left for them by a patron. In violation of the California Labor Code, Defendants failed to permit
19 Plaintiffs and Class Members to retain all gratuities paid to them by customers.

20 35. Defendants, as a matter of corporate policy, practice, and procedure, intentionally,
21 knowingly and systematically failed to reimburse and indemnify Plaintiffs and other Class Members
22 for required business expenses incurred in direct consequence of discharging their duties on behalf of
23 Defendants.

24 36. Plaintiffs are informed and believe that Defendants committed numerous other
25 violations of the California Labor Code, including but not limited to those identified in this Complaint.
26 Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiffs intend to
27 seek civil penalties for all violations of the California Labor Code, whether they experienced them
28 personally or not.

37. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

FIRST CAUSE OF ACTION
UNFAIR COMPETITION

38. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully set forth herein.

39. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

40. Defendants committed numerous violations of the California Labor Code throughout the employment relationship.

41. Plaintiffs are also informed and believe and thereon allege that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

42. As a direct and legal result of Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution as a result of the unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

43. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully set forth herein.

44. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

45. Defendants failed to list on the wage statements provided to Plaintiffs and similarly situated employees all hours worked and the applicable rates of pay and overtime rate. Plaintiffs allege that Defendants failed to provide accurate itemized wage statements in accordance with Labor Code section 226(a) to all members of the Labor Code Class.

46. In addition, Labor Code section 246(h) requires employers to provide employees with written notice of the amount of sick leave available either on a wage statement or in a separate writing

1 provided on the designated pay date. Defendants failed to list the amount of sick leave available on
2 Plaintiffs and similarly situated employees' wage statements.

3 47. Additionally, Plaintiffs allege they suffered injury as a result of Defendants' knowing
4 and intentional failure to provide accurate and complete information as required by any one or more
5 of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and Plaintiffs cannot
6 promptly and easily determine (*i.e.* a reasonable person in each Plaintiffs' position would not be able
7 to readily ascertain the information without reference to other documents or information) from the
8 wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

9 48. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiffs
10 and Class Members were damaged and are entitled to statutory and civil penalties under the Labor
11 Code, and attorney's fees and costs, in an amount to be proven at trial.

12 **THIRD CAUSE OF ACTION**
13 **FAILURE TO PAY MINIMUM WAGES**

14 49. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully
15 set forth herein.

16 50. Defendants were required to compensate Plaintiffs with at least the State's minimum
17 wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

18 51. Defendants were aware of their obligation to pay the minimum wages but failed to do
19 so.

20 52. In addition, California Labor Code section 558.1, subsection (a), provides that "Any
21 employer or other person acting on behalf of an employer, who violates, or cause to be violated, any
22 provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare
23 Commission, or violates or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802,
24 may be held liable as the employer for such violation."

25 53. California Labor Code section 558.1, subsection (b), further provides that the term
26 "other person acting on behalf of any employer" means "a natural person who is an owner, director,
27 officer, or managing agent of the employer."
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1 54. Provisions regulating minimum wages or hours and days of work in any order of the
2 Industrial Welfare Commission, such as IWC Wage Order No. 5-2001, and California Labor Code
3 section 1194 have been violated by, or were caused to be violated by, Defendants. Plaintiffs are
4 informed and thereon believe that each Defendant was acting on behalf of each other Defendant,
5 including as an owner and/or managing agent of Defendants, within the meaning of California Labor
6 Code section 558.1. Therefore, each Defendant may be held liable as the employer for the violations
7 of provisions regulating minimum wages or hours and days of work in any order of the Industrial
8 Welfare Commission, including IWC Wage Order No. 5-2001, and California Labor Code section
9 1194.

10 55. Defendants' conduct described herein violates California Labor Code section 1194, and
11 Wage Orders. As a proximate result of Defendants' conduct, Plaintiffs and the Plaintiff Class have
12 been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiffs and
13 the Plaintiff Class now seek these wages, liquidated damages pursuant to California Labor Code
14 section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PAY OVERTIME WAGES**

17 56. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully
18 set forth herein.

19 57. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to
20 employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2)
21 times the person's regular rate of pay, depending on the number of hours worked by the person on a
22 daily or weekly basis.

23 58. Specifically, the applicable IWC Wage Orders provide that Defendants are and were
24 required to pay overtime compensation to Plaintiffs and Class Members at the rate of one and one-half
25 times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours
26 in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the
27 seventh day of work in a workweek.

28 59. The applicable IWC Wage Orders further provide that Defendants are and were
required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times their

1 regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or
2 in excess of eight (8) hours on the seventh day of work in a workweek.

3 60. California Labor Code § 510 codifies the right to overtime compensation at one and
4 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
5 forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day of
6 work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
7 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a workweek.

8 61. Labor Code § 510 and the applicable IWC Wage Orders provide that employment of
9 more than six days in a workweek is only permissible if the employer pays proper overtime
10 compensation as set forth herein.

11 62. Plaintiffs and Class Members were employees entitled to the protections of California
12 Labor Code §§ 510 and 1194.

13 63. During the relevant time period, Defendants required Plaintiffs and Class Members to
14 work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh consecutive
15 day of work, entitling them to overtime wages.

16 64. During the relevant time period, Defendants failed to pay Plaintiffs and Class Members
17 overtime wages for all hours worked when Defendants failed to pay for time spent working off-the-
18 clock. To the extent these hours qualify for the payment of overtime wages, Plaintiffs and Class
19 Members were not paid proper overtime wages.

20 65. In violation of California law, Defendants knowingly and willfully refused to perform
21 their obligations and compensate Plaintiffs and Class Members for all wages earned and all hours
22 worked.

23 66. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of overtime
24 compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198,
25 and is therefore unlawful.

26 67. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to recover
27 their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS

68. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully set forth herein.

69. An employer must provide an employee a meal period and/or rest period in accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

70. Labor Code section 512 and Wage Order 5-2001, section 11(A) require an employer to provide a meal period of not less than thirty (30) minutes for each work period of more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a second meal period.

71. Labor Code section 226.7 and Wage Order 5-2001 section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

72. Plaintiffs allege that Defendants maintained a policy and procedure by which Defendants failed to provide Plaintiffs and similarly situated employees with compliant meal breaks by requiring employees to clock out for their meal break immediately after clocking-in at the beginning of their shift, and then requiring employees to work the remainder of their six (6) to eight (8) hour shift without any meal break. In this way, Plaintiffs and similarly situated employees essentially started their shift thirty (30) minutes later than the scheduled time, and were denied a compliant meal break.

73. Plaintiffs further allege that Defendants failed to provide rest breaks of at least ten (10) minutes for each work period that they and similarly situated employees worked for four (4) hours or major fraction thereof.

74. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiffs and members of the Class are entitled to one (1) hour of pay at the regular rate of compensation for each meal period and/or rest period not provided, as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See* Labor Code § 226.7 and Wage Order 5-2001 §§ 11(B), 12(B).

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES

75. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully set forth herein.

76. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. California Labor Code § 201.

77. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. California Labor Code § 203.

78. Plaintiffs and similarly situated employees did not receive all wages at their termination or separation from employment, including, but not limited to, unpaid minimum wages, and unpaid meal and rest period penalties.

79. Defendants knew of their obligation to pay Plaintiffs and Class Members and Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct shows Defendants' knowledge of their obligation to pay all wages owed upon termination and willful refusal.

80. As a proximate result of the Defendants' conduct, Plaintiffs and Class members have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES

81. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully set forth herein.

82. Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

1 83. Defendants knew that Plaintiffs and members of the Class incurred expenses for work
2 purposes, including but not necessarily limited to business use of employee personal vehicles to travel
3 between locations that were not their principal place of work for deliveries and for other purposes.
4 However, Defendants did not reimburse Plaintiffs or members of the Class for these expenses.

5 84. Defendants' conduct described herein violated California Labor Code section 2802. As
6 a proximate result of Defendants' conduct, Plaintiffs and members of the Class have been damaged in
7 an amount to be established at trial, and are entitled to recover these damages, as well as interest and
8 reasonable attorney's fees and costs, pursuant to statute.

9
10 **EIGHTH CAUSE OF ACTION**
 UNLAWFUL RETENTION OF GRATUITIES

11 85. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully
12 set forth herein.

13 86. California Labor Code § 351 provides that no employer shall collect, take, or receive
14 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any
15 amount from wages due to an employee on account of a gratuity, or require an employee to credit the
16 amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the
17 employer.

18 87. During the relevant time period, Defendants had a policy and practice of improperly
19 retaining all or part of gratuities left by patrons for Plaintiff and class members.

20 88. As a result of Defendants' practice of improperly retaining Plaintiffs' and class
21 members' gratuities, Plaintiffs and class members suffered and continue to suffer a loss of wages, the
22 exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

23 **NINTH CAUSE OF ACTION**
24 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

25 89. Plaintiffs incorporate by reference and re-allege the above paragraphs as though fully
26 set forth herein.

27 90. Plaintiffs bring this cause of action as a proxy for the State of California and in this
28 capacity, seek penalties on behalf of all Aggrieved Employees for Defendants' violations of the

1 California Labor Code, including but not necessarily limited to, those Labor Code violations identified
2 above. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and
3 had one or more of the violations committed against him as alleged herein, and therefore are properly
4 suited to represent the interests of all other aggrieved employees.

5 91. On or about June 4, 2021, Plaintiff GUADALUPE ANTONIO SANCHEZ sent written
6 notice to the LWDA regarding Defendants’ violations of the California Labor Code, pursuant to Labor
7 Code section 2698, *et seq.*, PAGA. On June 7, 2021, Plaintiff GUADALUPE ANTONIO SANCHEZ
8 filed an amended PAGA Notice. On or about July 21, 2021, Plaintiff RYAN DEVORE sent written
9 notice to the LWDA regarding Defendants’ violations of the California Labor Code, pursuant to Labor
10 Code section 2698, *et seq.*, PAGA. On July 26, 2021, Plaintiff RYAN DEVORE filed an amended
11 PAGA Notice. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff
12 whether the LWDA intends to investigate Plaintiffs’ PAGA claims. On February 14, 2022, Plaintiff
13 RICARDO GALLARDO filed a PAGA Notice regarding Defendants’ violations of the California
14 Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. Plaintiffs’ PAGA Notices
15 collectively assert PAGA claims for alleged violations of Labor Code sections 201, 202, 203, 204,
16 210, 213, 226, 226.3, 226.7, 246, 256, 351, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1193.6, 1194,
17 1194.2, 1197, 1197.1, 1198, 2800, 2802 and Wage Order 5.

18 92. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as
19 to Defendants and are therefore able to pursue a claim for penalties on behalf of themselves and all
20 other aggrieved employees under PAGA.

21 93. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover
22 civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

23 94. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred
24 herein.

25 **DAMAGES**

26 WHEREFORE Plaintiffs request relief as follows:

- 27 1. A jury trial;
- 28 2. For an order certifying the class;

- 1 3. For an order certifying Plaintiffs' counsel as class counsel;
2 4. For an order appointing Plaintiffs as class representative;
3 5. For penalties and liquidated damages under the California Labor Code according to
4 proof allowed by law;
5 6. For compensatory damages, including, but not limited to, unpaid wages, plus interest,
6 according to proof allowed by law;
7 7. For an award to Plaintiffs of costs of suit incurred herein and reasonable attorney's
8 fees;
9 8. For injunctive relief;
10 9. For an award of prejudgment and post-judgment interest; and
11 10. For an award to Plaintiffs of such other and further relief as the Court deems just and
12 proper.

13
14
15 Dated: August 19, 2022

Castle Law: California Employment Counsel, PC

17 By: 
18 Timothy B. Del Castillo
19 Lisa L. Bradner
20 Attorneys for Plaintiffs RYAN DEVORE and the Class
21
22

23 Dated: August 18, 2022

AEGIS LAW FIRM, PC

24 By: 
25 Jessica L. Campbell
26 Joseph M. Szilagyi
27 Attorneys for Plaintiffs GUADALUPE ANTONIO
28 SANCHEZ and RICARDO GALLARDO

1 **JURY TRIAL DEMAND**

2 Plaintiffs hereby demand a trial by jury.

3
4
5 Dated: August 19, 2022

Castle Law: California Employment Counsel, PC

6
7 By: 
8 Timothy B. Del Castillo
9 Lisa L. Bradner
10 Attorneys for Plaintiffs RYAN DEVORE and the Class

11 Dated: August 18, 2022

AEGIS LAW FIRM, PC

12
13 By: 
14 Jessica L. Campbell
15 Joseph M. Szilagyi
16 Attorneys for Plaintiffs GUADALUPE ANTONIO
17 SANCHEZ and RICARDO GALLARDO
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CASE NAME: Ryan DeVore v. BWW Resources, LLC, et. al

Case No.: 34-2021-00304975

PROOF OF SERVICE

I am a citizen of the United States, employed in the City of Roseville and the County of Placer, California. My business address is 2999 Douglas Boulevard, Suite 180, Roseville, California 95661. I am over the age of 18 years and not a party to the within action. On today's date, I caused to be served the following:

• FIRST AMENDED COMPLAINT FOR DAMAGES

☒ I am readily familiar with the firm's practice of collection and processing correspondence for mailing in the ordinary course of business. Under this practice, correspondence is collected, sealed, postage thereon fully prepaid, and deposited the same day with the U. S. Postal Service on the same day.

☐ I caused the above documents to be personally delivered to the addressee(s) set forth below.

☒ I caused the above documents to be electronically transmitted via e-mail to the electronic addresses shown below.

	ATTORNEYS FOR DEFENDANTS
STACEY E. JAMES sjames@littler.com	HEIDI HEGEWALD hhegewald@littler.com
ANN POSTHILL aposthill@littler.com	VALERIE BLAKE vblake@littler.com
MARIA RUVALCABA mruvalcaba@littler.com	

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on August 24, 2022 in Roseville, California.



Ron Buchanan